IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

District :

Criminal Writ Petition No. 45 of 2006

Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M. P. S. Tiwari & K. M. Yadav, Adv. for petitioner.
Shri S. N. Kumar, Adv. for respondent No. 1.
Shjri R. S. Sundaram, Adv. for respondents no. 2 & 3.
Shri D. B. Patel, APP for respondent No.4.

CORAM : K. J. ROHEE & C. L. PANGARKAR JJ.

Dated : 16th October, 2006.

1. Heard counsel for parties. None for respondents 5 to 7.

2. By this petition under Article 226 of the Constitution of India the petitioner seeks cancellation of the probate dated 03.02.01 issued by Civil Judge, Senior Division, Buldhana, in favour

of respondent No.6 and also seeks a direction for conducting enquiry in respect of the alleged forgery of will dated 04.12.1997 registered on 17.11.1998.

3. One Manohar Kisan Wakode was the employee of State Bank of India (respondent No.1). It is alleged by the petitioner that since he was unmarried he had nominated the petitioner for his provident fund account. Manohar Wakode died on 16.07.1998. After his death the petitioner preferred claim for the provident fund as the nominee of deceased Manohar Wakode. Dhiraj Sharadchandra Wakode (respondent No.6) who is the nephew of deceased Manohar Wakode, also preferred claim for the provident fund to the State Bank of India (respondent No.1). Resopondent No. 1 asked both, the petitioner as well as respondent No.6 to produce probate for releasing the amount of provident fund standing in the name of Manohar

Wakode. It seems that respondent No.6 produced probate dated 03.02.01 issued by Civil Judge, Senior Division, Buldhana on the basis of will dated 04.12.1997 executed by Manohar Wakode in favour of respondent No.6. This action is challenged by the petitioner.

4. According to the petitioner no notice of the probate proceedings was issued to him. The learned counsel for the petitioner pointed out that the alleged will was executed about 7 months prior to the death of Manohar, whereas it was registered about 4 months after his death and that the said will is forged and fabricated. The petitioner, therefore, wants an enquiry into the alleged forgery.

5. It may be noted that the petitioner never approached the police machinery about the alleged forgery and fabrication of the will.

6. It may further be noted that the

jurisdiction of granting and revoking probate lies with the District Judge under Section 264 of the Indian Succession Act and under the provisions of the same Act those powers are delegated to Civil Judge, Senior Division. Section 273 of the Indian Succession Act declares conclusiveness of the probate issued by the District Judge or the Civil Judge, Senior Division. It may further be noted that Section 299 of the Indian Succession Act provides appeals from the orders of the District Judge or the officer to whom powers have been delegated.

7. Thus there are two remedies open to the petitioner, firstly to apply for revocation of the probate to the authority which granted it and secondly to prefer an appeal against grant of probate. It is obvious that the appellant has not exhausted any of these remedies and directly rushed to this Court. On this background this

Court is not inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. The petition is, therefore, dismissed in limine.

JUDGE **JUDGE**

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